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10 Lloyd Lowe, and Jason Corsolini

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20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA

22 SALEH ALI, individually, and as Administrator
23 of the Estate of NASIR ALI SOLIS,

Case No.: C 07 04739 (CRB)

24 Plaintiffs,

JOINT CASE MANAGEMENT
CONFERENCE STATEMENT

25 -vs-

DATE: December 21, 2007
TIME: 8:30 a.m.
CRTRM: 8

26 CITY OF HAYWARD, a municipal corporation;
27 LLOYD LOWE, in his capacity as Chief of
Police for the CITY OF HAYWARD; JASON
CORSOLINI, individually and in his capacity as
an officer of the HAYWARD POLICE,

Defendants.

1. Jurisdiction. All named parties are purportedly subject to the Court's jurisdiction pursuant to Title 28 of the United States Code Sections 1331 and 1343. See related action of Joya v. City of Hayward, et al., United States District Court Case No. C 07-04739 (SI) for related

1 parties.

2 2. Substance of Action.

3 **Plaintiff's Claim:**

4 On the afternoon of August 30, 2006, Nasir Solis approached his brother, Alberto Solis,
5 and a group of several other people, including Mark Mata, Mr. Mata's brother, Mr. Mata's
6 mother, and Mr. Mata's grandmother, in the yard of Mr. Mata's residence at 168 Laurel Avenue,
7 Hayward, California. Nasir Solis knew Mr. Mata through school and common acquaintances.
8 Nasir Solis asked his brother, Alberto Solis, if he had taken Nasir Solis's bicycle. Nasir Solis's
9 brother was bewildered at the question and told Nasir Solis that he had not taken his bicycle.
10 Nasir Solis's brother stepped out of the yard and began arguing with Nasir Solis, who held a
11 short stick or a shaft in his hand. The two brothers began to wrestle after Nasir Solis struck the
12 yard's fence with the object he held. No threats were made by Nasir Solis, and the wrestling
13 between the two brothers was not violent or out of control.

14 Defendant Jason Defendant Corsolini arrived on the scene in a marked Hayward Police
15 Department vehicle. Defendant Corsolini abruptly stopped his police vehicle, exited the vehicle
16 in full police uniform, and immediately ran toward Nasir Solis. Defendant Corsolini held a long
17 black police baton in one hand as he ran toward Nasir Solis. Nasir Solis's brother stepped away
18 when he noticed the officer. Defendant Corsolini immediately struck Nasir Solis on the head
19 with his police baton, and Nasir Solis dropped the object he had been holding. As he struck
20 Nasir Solis, Defendant Corsolini cursed at Nasir Solis repeatedly and told him to "drop the
21 mother fucking stick." Nasir Solis never struck the officer. Nasir Solis was empty-handed as he
22 backed away from Defendant Corsolini after being struck on the head by Defendant Corsolini's
23 police baton. Defendant Corsolini continued striking Nasir Solis with his police baton.
24 Witnesses called out to Defendant Corsolini to stop hitting Nasir Solis. Defendant Corsolini
25 landed numerous blows to Nasir Solis, who was unarmed after the initial blow. Nasir Solis and
26 Defendant Corsolini eventually faced each other while Defendant Corsolini continued to strike
27 Nasir Solis. Nasir Solis did not strike Defendant Corsolini, but held on to him. Eventually,
Nasir Solis fell to the ground with Defendant Corsolini on top of him. Defendant Corsolini then
was in a position of advantage over Nasir Solis, who was on the ground. Defendant Corsolini

1 had Nasir Solis pinned to the ground with his knee on Nasir Solis's back. Nasir Solis told
2 Defendant Corsolini that he "gave up" and begged him not to shoot him. Defendant Corsolini
3 made no attempt to handcuff Nasir Solis. Witnesses yelled out to Defendant Corsolini and also
4 pleaded with him not to further hurt or shoot Nasir Solis, since it appeared to them that Nasir
5 Solis no longer presented a threat to Defendant Corsolini. For unjustifiable reasons, Defendant
6 Corsolini then shot Nasir Solis several times with at least one shot to his head above his ear that
7 caused the immanent death of Nasir Solis.

8 Plaintiff alleges that Defendant Corsolini's conduct was brutal, malicious, and done
9 without any just provocation or cause, proximately causing Nasir Solis's suffering and death,
10 and injuries and damages to Plaintiff. Plaintiffs further alleges that Defendant City of Hayward
11 and Defendant LLOYD Lowe, its Chief of Police, have and had a mandatory duty of care to
12 properly and adequately hire, train, retain, supervise, and discipline its officer employees so as to
13 avoid unreasonable risk of harm to citizens. With deliberate indifference, these defendants
14 failed to take necessary, proper, or adequate measures in order to prevent the violation of Nasir
15 Solis's and Plaintiff's rights, the suffering and death of the Nasir Solis, and injuries and damages
16 to Plaintiff. These defendants breached their duty of care to citizens in that they failed to
17 adequately train, supervise and discipline their officers, including Defendant Corsolini, in the
18 proper use of force, and/or failed to have adequate policies and procedures regarding the use of
19 force. This lack of adequate supervisory training demonstrates the existence of an informal
20 custom or policy of promoting, tolerating, and/or ratifying the continuing use of excessive force
21 toward citizens by officers employed by the City of Hayward.

22 **Defendants' Claim:** On August 30, 2006, at approximately 2:45 p.m., Nasir Solis
23 trespassed on to the residence of Bryant Taylor. Taylor confronted Solis. Solis wielded what
24 appeared to be an in-line skate in his hand and physically attacked Taylor. Solis yelled, "Straight
25 Norte!". Taylor followed Solis as he fled to another residence. Solis was involved in another
26 physical altercation. The Hayward Police Department ("HPD") responded to this battery in
27 progress at 168 Laurel Avenue, in Hayward, California. HPD Officer Jason Corsolini, observed
Solis brandish a metal pipe in his right hand. Solis repeatedly struck another male with the pipe
to his upper body and head area. Corsolini repeatedly commanded Solis to drop the pipe and go

1 to the ground. Instead of complying with the officer's commands, Solis charged Corsolini and
2 struck him with the pipe. Corsolini defended himself by striking Solis with his baton. Corsolini
3 took the pipe from Solis. Solis took out a red bandana and proclaimed, "Norte, homey, Norte!"
4 (i.e. Norteno Gang Affiliation) Solis charged the officer again causing both individuals to fall to
5 the ground. Solis grabbed for the officer's firearm. The officer attempted to retain his firearm by
6 pushing down on Solis' hand to keep the firearm in its holster. Solis threatened, "(I'm going to)
7 shoot you." Corsolini gained control of his firearm. With Solis grabbing at the firearm several
8 errant shots rang out. Ultimately, a fatal shot entered Solis through his neck area. The Autopsy
9 Protocol detected .086 mg./l of methamphetamine and .024 mg./l of amphetamine in Solis' leg
10 blood.

11 Defendants assert that Corsolini utilized reasonable force in his self-defense and during
12 his contact with Solis. Moreover, defendants further assert that they are entitled to qualified
13 immunity, inter alia.

14 3. Identification of Issues.

15 **Plaintiff:** Whether the force used by the defendant police officer who caused the death of
16 Nasir Solis was excessive; whether the defendant police officer was justified in causing the death
17 of Nasir Solis; whether Defendants the City of Hayward, Lloyd Lowe and other defendants
18 agents of the City of Hayward ("Defendants") failed to take necessary, proper, or adequate
19 measures in order to prevent the death of Nasir Solis and the violation of Plaintiff's rights;
20 whether Defendants breached their duty of care to citizens in that they failed to adequately train,
21 supervise and discipline their officers, in the proper use of force, and/or failed to have adequate
22 policies and procedures regarding the use of force; whether plaintiff is entitled to compensatory
23 and statutory damages as a result of Defendants' conduct; whether plaintiff is entitled to an
24 award of punitive damages.

25 **Defendants:** The principal issues in dispute are the following: whether the force used by the
26 defendant police officer was justified; whether defendant police officer is entitled to qualified
27 immunity; whether plaintiff's damages were caused by excessive force; whether plaintiff is
entitled to an award of punitive damages.

4. Narrowing of Issues.

1 **Plaintiff:** In addition to the issues set forth below by Defendants: whether the defendants
 2 failed to take necessary, proper, or adequate measures in order to prevent the death of Nasir
 3 Solis; whether the Defendants failed to adequately train, supervise and discipline their officers, in
 4 the proper use of force, and/or failed to have adequate policies and procedures regarding the use
 5 of force; that Plaintiff's damages were caused by excessive force and/or the misconduct of the
 6 Defendants.

7 **Defendants:** That the force used by the defendant police officer, if any, was justified; that
 8 defendant police officer is entitled to qualified immunity; that plaintiff's damages were caused by
 9 excessive force; that plaintiff is entitled to an award of punitive damages.

5. Motions

10 **Plaintiff:** On December 10, 2007, Plaintiff in the related action, Maria Joya filed a Notice
 11 and Administrative Motion to Determine Whether Cases Should be Related indicating that the
 12 Related Action should be related to this case. Plaintiff supports this motion and will seek a ruling
 13 on the motion on the Case Management Conference.

14 **Defendants:** Absent agreement, dispositive motion re above; motion to consolidate this action
 15 with the related action filed by Maria Joya, entitled Maria Joya v. City of Hayward, et al., United
 16 States District Court Case No. C 07-04739 (SI).

17 6. Relief. Plaintiff prays for general damages in the amount of \$10,000,000.00, and the
 18 following damages according to proof: special damages, funeral and burial expenses, punitive
 19 damages, and statutory damages.

20 7. Discovery. The parties plan to comply with the Court imposed deadline for initial
 21 disclosures. The parties anticipate conducting discovery as per the protocol defined in the FRCP
 22 including taking the depositions of all parties, and third party witnesses. In the event that the
 23 number of witnesses to be deposed exceeds the maximum under the FRCP, the parties shall seek
 24 relief from the Court. The parties also anticipate serving written discovery including but not
 25 limited to interrogatories, request for production of documents, request for admissions, and
 26 subpoena duces tecum prior to the non-expert discovery cut-off date. The parties anticipate that
 27 initial disclosures shall be made on or before the initial case management conference. The
 parties further agree that to the extent evidentiary samples relating to this matter, if any, are

1 maintained by HPD, or the Alameda County Sheriff's Department, Coroner's Bureau, or said
 2 agencies designees or agents, said parties mutually agree that they may obtain sufficient
 3 evidentiary samples for analysis at their own cost and expense to prepare their respective cases.

4 8. ADR. The parties are amenable to ADR.

5 9. The parties anticipate a ten-day trial, including jury selection.

6 10. Related Cases. Maria Joya v. City of Hayward, et al., United States District Court
 7 Case No. C 07-04739 (SI)

8 11. Proposed Schedule:

9 **Plaintiff:** Both parties agree that this case and the related case, *Joya v. City of Hayward et al.*,
 10 US Dis. Court Case No. C 07-04739 (SI) (the "Related Action") should be consolidated. Plaintiff
 11 believes that the Related Action should be consolidated with this action with Honorable Judge
 12 Breyer presiding over the two cases since this action was filed earlier than the Related Action.
 13 Nonetheless, Defendants argue that this case should be related to the Related Action with
 14 Honorable Judge Illston presiding over the two cases. On December 10, 2007, Maria Joya,
 15 plaintiff in the Related Action (C 07-04739), filed Notice and Administrative Motion to
 16 Determine Whether Cases Should be Related indicating that the Related Action should be related
 17 to this case.
 18
 19

20 The present action was filed *before* the Related Action, thus it is the "earliest-filed
 21 case" within the meaning of Northern District's Local Rule §3.12 and should, therefore, become
 22 the leading case in a situation of two related actions as presented here. Further, the present action
 23 was served on Defendants by personal service on September 25, 2007 while the Related Action
 24 was served on Defendants on September 28, 2007. Thus, the fact that Defendants filed an
 25 Answer to this action only after an Answer was filed to the Related Action, does not indicate any
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 27

1 “priority” but merely the failure of the Defendants to timely respond to this action. Further, this
2 case was assigned to Honorable Judge Breyer only after the Defendants declined to proceed with
3 the case before Honorable Magistrate-Judge Chen on October 31, 2007. The Defendants took a
4 calculated risk when declining to proceed before Magistrate Judge Chen and it appears that they
5 are unsatisfied with the result and are making a second attempt to shop for a “better” forum.
6 Plaintiff’s counsel offered Defendants counsel to stipulate for a consolidation as early as
7 November 8, 2007. On November 28, 2007, counsel for Defendants advised Plaintiff’s Counsel
8 that they insist on consolidation with Judge Illston presiding over the two cases. On the same
9 day, November 28, 2007, Plaintiff’s counsel asked Defendants to reconsider their position in
10 light of the timing of the filing of the two cases vis-à-vis Rule §3.12, but this offer was also
11 rejected by Defendants’ counsel.

12 The Plaintiff will seek a ruling on this issue on the Case Management Conference set
13 for December 21, 2007. If the two cases are consolidated as requested by Plaintiff, Plaintiff
14 proposes that this case be set for another case management conference in 30 days. Taking into
15 account the consolidation of the two cases, Plaintiff propose the following schedule:

16 A. Discovery Cut-Off (Non-Expert) May 31, 2008

17 B. Expert Disclosures June 30, 2008

18 C. Discovery Cut-Off (Expert) July 20, 2008

19 D. Pre-Trial Conference August 20, 2008

20 E. Trial (Estimate: 10 days) September 8, 2008

1 Finally, the parties should not wait until the completion of the ADR process to commence with
 2 discovery as it is essential to conduct discovery in order to engage in a meaningful ADR process.
 3

4 A. **Defendants:** It is premature to set a schedule at this time. In order to minimize the costs
 5 and attorneys fees associated with discovery, and to maximize settlement authority, at the outset,
 6 defendants prefer to mediate the dispute. Until such time the within action is consolidated with
 7 the pre-existing related action¹, and the ADR process is completed, in the interests of judicial
 8 economy, defendants propose that this matter be reset for further case management conference
 9 120 days after the consolidation and after a global mediation.

10 DATED: December 11, 2007

LAW OFFICES OF KLETTER & PERETZ

By: 

YOSEF PERETZ

Attorney for Plaintiff

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 14 ¹In regards to the related action of Joya v. City of Hayward, et al., United States District
 15 Court Case No. C 07 04739 (SI), on September 28, 2007, plaintiff personally served her
 16 complaint on defendants. On October 16, 2007, defendants answered the complaint.

16 In the within action, on October 19, 2007, plaintiff served its complaint via United States
 17 mail on defendants. It should be noted that plaintiff filed a proof of service indicating personal
 18 service of the complaint on a "Jane Doe" on the fourth floor of Hayward City Hall on September
 19 25, 2007. Defendants' counsel never received the complaint that was purportedly personally
 20 served. In the spirit of facilitating the adjudication of the matter, since Defendants already had
 21 answered the duplicative complaint (see complaint filed in Joya which is a verbatim rendition of
 22 the Ali complaint), defendants answered the mail served complaint in the within action on
 23 October 31, 2007, rather than formally contest service of process. On October 31, 2007,
 24 defendants counsel forwarded plaintiff's counsel a stipulation to mediate the dispute and
 25 forwarded a draft joint case management conference statement. After defendants declined to
 26 proceed before Magistrate Judge Edward M. Chen, on November 2, 2007, the case was
 27 reassigned to Judge Charles R. Breyer. On November 7, 2007, at the Court's request, plaintiff
 filed an electronic version of his complaint. After normal business hours, on November 8, 2007
 at 5:27 p.m., plaintiff's counsel proposed via electronic mail that the within matter be
 consolidated with Joya v. City of Hayward, with the Ali matter serving as the lead case.
 Defendants' counsel was on vacation from November 9 through November 25, 2007. On
 November 28, 2007, defendants' counsel advised plaintiff's counsel that he is amenable to
 consolidating the matters with Joya serving as the lead case, with Judge Susan Illston presiding.
 Since defendants did not accept plaintiff's proposal, plaintiff's counsel characterized defendants'
 decision to not proceed before a Magistrate as improper "forum shopping". To the contrary,
 plaintiff appears to be engaged in impermissible "judge shopping". Since plaintiffs Ali and Joya
 chose to file separate duplicative complaints on successive days, Ali should not be able to benefit
 from his gamesmanship by obtaining his preferred court of choice.

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DATED: December 12, 2007

THE MICHAEL LAW FIRM

By: /s/
ISSA J. MICHAEL
Attorney for Plaintiff

DATED: December 12, 2007

MICHAEL J. O'TOOLE, City Attorney

By: /s/
RANDOLPH S. HOM,
Assistant City Attorney
Attorneys for Defendants